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"Commissioner for Patents"
P.O. Box 1450
Alexandria, VA 22313-1450

on JANUARY 21, 2004

Milton L. Honig

MILTON L. HONIG
Reg. No. 28,617
Attorney for Applicant(s)

1/21/04

Date of
Signature

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NOTICE OF APPEAL TO THE BOARD OF PATENT APPEALS AND INTERFERENCES

Customer Number: 000201

Attorney Docket No.: J6720(C)

Applicant: Suares et al.

Serial No.: 10/056,923

Filed: January 24, 2002

FOR: THICKENED COSMETIC COMPOSITIONS

UNUS No.: 01-0504-CPI

Group: 1615

Examiner: Blessing M. Fubara

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant(s) hereby appeals to the Board of Appeals from the decision dated October 22, 2003 of the Primary Examiner finally rejecting claims 1,2,5,8 and 8.

The item(s) checked below are appropriate.

1. ☒ A timely response to the Final Rejection has been filed.
2. ☐ An Extension of Time to respond to the Final Rejection was requested for ___ month(s).
3. ☐ An Extension of Time to file a Notice of Appeal was granted for ___ month(s).
4. ☒ Charge statutory fee of \$330.00 to Deposit Account No. 12-1155. Please charge any additional fees or credit overpayment to Deposit Account No. 12-1155. This request is being submitted in triplicate.

Signature (Rule 191(b))

Milton L. Honig

Milton L. Honig
Registration No. 28,617
Attorney for Applicant(s)

Post Office Address
(to which correspondence is to be sent)

Patent Department
Unilever
45 River Road
Edgewater, New Jersey 07020

MLH/sm
201-840-2403


PIPE
JAN 23 2004
PATENT & TRADEMARK

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Edgewater, New Jersey 07020

January 20, 2004

BRIEF FOR APPELLANT

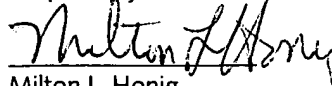
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

There are enclosed herewith three (3) copies of an Appeal Brief for Appellant. Please charge \$330.00 to our Deposit Acct. No. 120-1155. Please credit any overpayment or charge any additional fees to Deposit Acct. No. 12-1155.

Three copies of this letter are enclosed.

Respectfully submitted,



Milton L. Honig
Registration No. 28,617
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BRIEF FOR APPELLANT

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I. REAL PARTY IN INTEREST

Unilever Home & Personal Care USA, Division of Conopco, Inc. is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences known to appellant, the appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending Appeal.

III. STATUS OF CLAIMS

Claims 1, 2, 5, 8 and 9 are on appeal. Original claim 1 was amended during prosecution. Claims 3, 4, 6 and 7 were canceled. Claims 2, 5 and 8 remain in their original state. Claim 9 was a new claim.

IV. STATUS OF AMENDMENTS

No claims were amended subsequent to the Final Rejection.

V. SUMMARY OF THE INVENTION

Claim 1 defines the invention as a cosmetic composition which comprises the elements of a C₁-C₂₅ alpha- or beta- hydroxy carboxylic acid, a taurate copolymer which is acryloyl dimethyl taurate/vinyl pyrrolidone copolymer, and a cosmetically acceptable carrier, wherein

the composition has a pH of less than 7. The carboxylic acid and salt thereof present are in a respective molar ratio of 100:1 to 1:1.

Claim 2 identifies glycolic acid, lactic acid and 2-hydroxyoctanoic acid as species of the C₂-C₂₅ alpha-hydroxy carboxylic acid.

Claim 5 notes that the hydroxy carboxylic acid and salt thereof are present in a molar ratio of 50:1 to 1:1.

Claim 8 is the second independent claim describing the invention. Herein a cosmetic composition is claimed which includes a C₁-C₂₅ alpha- or beta- hydroxy carboxylic acid at least partially present as a salt thereof, in an acid to salt molar ratio of about 50:1 to about 1:1. Additionally present is an acryloyl dimethyl taurate/vinyl pyrrolidone copolymer, and a cosmetically acceptable carrier, wherein the composition has a pH of less than 7.

Claim 9 further focuses the invention of claim 1 by requiring that the hydroxy carboxylic acid and salt thereof are present in a molar ratio of 20:1 to 2:1.

VI. ISSUES ON APPEAL

Are claims 1, 2, 5, 8 and 9 obvious under 35 U.S.C. § 103 over Beerse et al. (US Patent 6,294,186)?

VII. GROUPING OF THE CLAIMS

The claims do not all stand or fall together. The Board is requested to consider the following grouping of claims:

Group I encompasses claims 1 and 2.

Group II encompasses claims 5 and 8.

Group III encompasses claim 9.

VIII. APPELLANT'S ARGUMENTS

Are claims 1, 2, 5, 8 and 9 obvious under 35 U.S.C. § 103 over Beerse et al. (US Patent 6,294,186)?

Aqueous cosmetic compositions often require thickeners to achieve an aesthetically pleasing viscosity. Countless numbers of thickening agents are known in the literature. This plethora perhaps intimates that not all thickening agents are equally effective for any particular type of formulation.

Indeed, there are some formulations which are extremely difficult to thicken, and even if initially thickened may have storage stability problems. Low pH systems are particularly sensitive and difficult. The present invention focuses upon providing a thickening system for cosmetic compositions in a low pH environment.

Appellant has discovered that taurate copolymers are highly effective thickening agents for low pH cosmetic compositions. More particularly, the thickening system is highly useful for building viscosity in compositions containing hydroxy carboxylic acid and salts thereof in molar ratios that can range from 100:1 to 1:1.

Beerse et al. was cited as a reference with respect to Example 3. Therein is disclosed a hand sanitizer that includes 1 % salicylic acid and 2% Aristoflex® AVC at a pH of 3.

Appellant's present claim 1 specifies that the hydroxy carboxylic acid and salt thereof are present in a relative molar ratio of 100:1 to 1:1. There is no explicit or inherent disclosure in Example 3 of Beerse et al. that the hand sanitizer includes a hydroxy carboxylic acid to salt thereof molar ratio of 100:1 to 1:1. It is noted that salicylic acid is described under Example 3 in its acid form with nothing mentioned about a salt form. Adjustment by NaOH/HCl to a particular pH is not an indication that the hydroxy carboxylic acid converts even partially to a salt form. Absent any disclosure with respect to the relative weight ratio of acid to salt, the Examiner has not set forth a prima facie case of obviousness. An essential feature of the claimed invention is absent from the reference.

In the event the Board does not concur that the Examiner has failed with respect to presenting a prima facie case of obviousness, consideration should be given to comparative experiments presented within the specification.

Appellant has conducted a number of comparative experiments. Attention is drawn to Tables II-IV. Viscosities were measured on formulations with various thickeners, at several low pH levels in the presence of glycolic acid and an ammonium salt thereof. Among the

group of thickeners tested were Simulgel® EG, Simulgel® NS and Aristoflex® AVC. The Simulgel® copolymers are formed from acryloyldimethyl taurate monomer units. These are types of taurate copolymers. Sepigel® 305 is a polyacrylamide crosslinked with 2-acrylamido-2-methylpropane sulfonic acid. Evident from Table II-IV is that taurate copolymers such as Simulgel® EG and NS as well as Sepigel® 305 with taurate crosslinkage are substantially inferior to Aristoflex® AVC.

Furthermore, Aristoflex® AVC remains proportionately relatively robust in viscosity even when glycolic acid is partially present as a salt form. Compare Table III and IV against Table II. Synthalen® CR has a viscosity close to Aristoflex® AVC in Table II. However, once salt forms of glycolic acid are introduced, this thickener (which is the only other viable thickener of the group) performs relatively poorly in comparison to the Aristoflex® AVC.

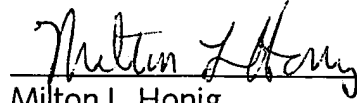
Not all taurate polymers perform equally well. This is especially so in the presence of salt forms of hydroxy carboxylic acids. The results with Aristoflex® AVC were unexpected. Beerse et al. unlike the claimed invention, remains silent in its disclosure as to any viscosity building benefits of one thickener over another. This reference in the Table at column 48, lines 8-9 equates Sepigel® 305 with that of Aristoflex® AVC. Appellant has shown a very substantial benefit over Sepigel® 305. It is particularly evident in situations where the hydroxy carboxylic acid to salt thereof molar ratio is 100:1 to 1:1. Beerse et al. does not reveal that ratio or identify the particular effectiveness of Aristoflex® AVC. Furthermore, Beerse et al. does not discuss the specific problem associated with building viscosity in hydroxy carboxylic acid systems. For all these reasons, the reference would not render the claims obvious.

The invention under Group II is likewise non-obvious over the reference. Beerse et al. does not disclose hydroxy carboxylic acid and salt combinations. Even more so, the reference does not specify the presence of acid and salt of a hydroxy carboxylic acid wherein a molar ratio of these materials ranges from 50:1 to 1:1. Were the Board to be convinced that a prima facie obviousness case had been set forth, consideration should be given to the comparative tests. In this respect, the molar ratio of 50:1 to 1:1 may be considered even closer to the ratio of the comparative experiments. For this reason, the Board may be more inclined with respect to the narrower ratio range. For these reasons the invention of Group II may have independent patentability.

Likewise there is a separate invention with respect to the molar ratio defined in claim 9, the subject of the Group III invention. Herein the molar ratio is 20:1 to 2:1. Neither this ratio nor any other ratio of hydroxycarboxylic acid to salt is mentioned in the reference. For this reason, Beerse et al. would not present a prima facie case of obviousness. In the event the Board disagrees, it is requested to consider the comparative experiments demonstrating the unobviousness of the claimed combination. The molar ratios used in those experiments are quite close and within the range represented by claim 9. The results of those experiments would have been unobvious to those skilled in the art even in light of the reference.

In view of the foregoing comments, appellant requests that the Board of Appeals and Interferences reverse the Examiner's rejection of the claims.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Milton L. Honig", written over a horizontal line.

Milton L. Honig
Registration No. 28,617
Attorney for Appellant(s)

MLH/sm
201-840-2403

IX. APPENDIX

Claims on Appeal

1. A cosmetic composition comprising:

- (i) from about 0.01 to 20% of a C₁-C₂₅ alpha- or beta-hydroxy carboxylic acid at least partially present as a salt thereof and wherein the carboxylic acid and salt thereof are present in a respective molar ratio of 100:1 to 1:1;
- (ii) from about 0.01 to about 10% of a taurate copolymer which is acryloyl dimethyl taurate/vinylpyrrolidone copolymer; and
- (iii) a cosmetically acceptable carrier, wherein the composition has a pH of less than 7.

2. A composition according to claim 1 wherein the C₂-C₂₅ alpha-hydroxy carboxylic acid is selected from the group consisting of glycolic acid, lactic acid, 2-hydroxyoctanoic acid and combinations thereof.

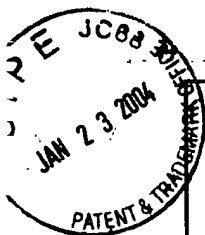
5. A composition according to claim 1 wherein the hydroxycarboxylic acid and salt thereof are present in a molar ratio of 50:1 to 1:1.

8. A cosmetic composition comprising:

- (i) from about 0.01 to 20% of a C₁-C₂₅ alpha- or beta-hydroxy carboxylic acid at least partially present as a salt thereof, in an acid to salt molar ratio of about 50:1 to about 1:1;

- (ii) from about 0.01 to about 10% of an acryloyldimethyl taurate/vinyl pyrrolidone copolymer; and
- (iii) a cosmetically acceptable carrier, wherein the composition has a pH of less than 7.

9. A composition according to claim 1 wherein the hydroxycarboxylic acid and salt thereof are present in a molar ratio of 20:1 to 2:1.



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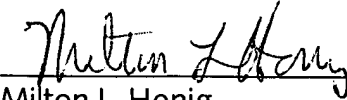
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